

VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JAMES FRED SUMPTER

VSB Docket Nos. 06-032-4173 [Nelson]
07-032-1740 [Roberts]

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On March 6, 2009, a hearing in this matter was held before a duly convened Third District Subcommittee consisting of Coral Gills, Lay Member; Esther J. Windmueller, Esq.; and Cliona M. B. Robb, Esq., Secretary, presiding.

Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Third District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand Without Terms:

1. At all times relevant hereto, James Fred Sumpter (Respondent or Sumpter), has been an attorney licensed to practice law in the Commonwealth of Virginia.

I. FINDINGS OF FACT

VSB Docket No. 06-032-4173 [Nelson]:

2. Sumpter entered into an agreement to represent Junius Nelson, Jr. [Nelson] in a domestic relations case brought by his wife [case]. For the representation, Nelson was to pay Sumpter at \$150.00 per hour. Wife was represented in the case by Janipher Robinson, Esq. [Robinson]

3. By letter dated August 12, 2002 to Nelson, Sumpter enclosed, *inter alia*, a legal services agreement for Nelson's signature and filling in of a down payment amount and an amount for a monthly payment. The written agreement called for an hourly fee for services rendered of \$150.00. It also contained a clause which stated the following:

Client acknowledges that if he/she shall terminate legal services before the closing on this case, all work done for the case up to

that point will be charged to the Client at the rate of \$175 per hour.

4. By letter dated September 16, 2002, Robinson propounded discovery to Sumpter.

5. On or about December 18, 2002, Nelson brought Sumpter a check in the amount of \$487.50 and, according to Nelson, he also brought information to Sumpter.

6. On or about December 27, 2002, Sumpter wrote Robinson enclosing unsigned responses to the interrogatories and indicating he would send more information upon receipt from Nelson, as well as signed answers.

7. On December 27, 2002, Sumpter sent to Nelson copies of interrogatories to be answered within the first week in January. He also asked that Nelson contact his office for an appointment to go over the answers.

8. By letter dated January 14, 2003 to Nelson, Sumpter requested Nelson to answer the questions previously mailed to him, which answers were due the following week.

9. By letter dated January 23, 2003 to Nelson, Sumpter stated he had not heard from Nelson and asked Nelson to contact his office about Nelson's plans for the case. Sumpter also stated, "We needed to file a response to the plaintiffs, but have not received completed information from [Nelson] about [his] work history and payment history."

10. By letter dated February 10, 2003, Robinson observed that the only remaining issues were equitable distribution and entry of a final decree. She asked Sumpter for his available dates to hear a motion to compel Nelson's responses to discovery and to obtain entry of a pretrial scheduling order.

11. On February 13, 2003, Sumpter wrote to Nelson indicating that he had tried to contact Nelson numerous times by letter and by phone to no avail, that they will have to attend a hearing on a motion to compel the answers, and asked that Nelson schedule an appointment to discuss the case.

12. By letter dated February 13, 2003, Sumpter apologized to Robinson for untimely responses to discovery, indicated that he had not been successful in reaching Nelson to obtain answers and provided his available dates for a hearing on a motion to compel and entry of a pretrial scheduling order for equitable distribution.

13. On March 6, 2003, Sumpter wrote Nelson about a scheduled April 28, 2003 hearing on a motion to compel Nelson's interrogatory answers.

14. On March 25, 2003, Sumpter wrote Robinson enclosing additional discovery answers, indicating he will send additional information when received and enclosing defendant's discovery for plaintiff's response.

15. In a letter to Robinson dated April 22, 2003, Sumpter enclosed updated answers to plaintiff's interrogatories and noted that plaintiff's answers to defendant's interrogatories were due as of April 18, 2003.

16. Sumpter wrote Nelson on April 22, 2003, regarding answers he and Nelson had discussed that date, stating the April 28, 2003 hearing is still scheduled and Robinson has not responded to defendant's discovery yet.

17. Sumpter wrote Nelson on April 24, 2003 notifying Nelson that the April 28, 2003 hearing had been cancelled and that he was waiting for Nelson's wife's answers to previously propounded questions.

18. On May 13, 2003, Sumpter received from Robinson the plaintiff's responses to Nelson's interrogatories.

19. On October 16, 2003, Robinson wrote Sumpter with a proposal for consideration by Nelson.

20. On October 21, 2003, Sumpter wrote Nelson with the elements of a proposed settlement as put forth by Robinson.

21. By letter dated November 7, 2003, Sumpter informed Robinson about Nelson's responses to Robinson's settlement proposal.

22. Robinson wrote to Sumpter on December 8, 2003, giving her client's responses to those of Nelson, effectively another proposal.

23. By letter dated March 8, 2004, Robinson wrote Sumpter indicating she had not heard from Sumpter regarding her December 8, 2003 settlement proposal, asking for available dates for a hearing.

24. Sumpter wrote Robinson on April 7, 2004, apologizing for not responding earlier, referring to some complex trials and his usual procrastination. Sumpter stated Nelson's positions with respect to ten issues. He noted that Robinson had set a May court date but indicated he was scheduled for a prepaid vacation and gave his available dates.

25. On or about April 16, 2004, Robinson issued a notice to Sumpter for a hearing on equitable distribution on May 3, 2004.

26. Sumpter wrote Nelson on April 28, 2004, informing Nelson about the May 3, 2004 hearing, that Sumpter was trying to get it continued to a date he would be available, but indicating that Sumpter needed to appear on May 3, 2004.

27. By an April 28, 2004, letter to Robinson, Sumpter stated he was unavailable for the May 3, 2004 hearing date and provided his available dates.

28. On information and belief, neither Sumpter nor Nelson appeared at the May 3, 2004 hearing, which was rescheduled to June 14, 2004, as a pretrial conference prior to an equitable distribution hearing.

29. By his letter of May 18, 2004, to Nelson, Sumpter informed him of his need to appear at the pretrial conference on June 14, 2004 and the equitable distribution hearing which was scheduled for October 12, 2004.

30. A Domestic Relations Pretrial order was entered on June 30, 2004, in reference to the October 12, 2004 equitable distribution hearing date. The order required, *inter alia*, completion of discovery 60 days prior to the hearing, provision to Robinson of witness and exhibit lists and copies of exhibits 30 days prior to the hearing.

31. At the hearing on equitable distribution on October 12, 2004, Robinson successfully objected to the introduction of any evidence on behalf of Nelson since it had not been produced within the time requirements of the pretrial order. Robinson also asked for attorney's fees as a result of Sumpter having missed a hearing date. Thereafter she submitted to the court her billing statements to substantiate an amount for the attorney's fees.

32. By letter dated October 19, 2004, Sumpter wrote the judge regarding the billing statements, stating the preparation in anticipation of the hearing was not extended because of any action or lack of action by Sumpter or his client, that the exclusion of Nelson's evidence served as sufficient punishment against Nelson and placed him in a less than advantageous position, and that the missed court date referred to by Robinson was an agreed upon continuance to allow Sumpter to take a pre-scheduled vacation.

33. Nelson then retained new trial counsel who substituted into the case by order entered November 4, 2004.

34. New trial counsel filed a motion for rehearing on November 15, 2004. In the motion, counsel requested a hearing to consider additional evidence not admitted in the equitable distribution hearing, including information which Nelson had supplied Sumpter prior to the equitable distribution hearing, including the following:

- a. that plaintiff wife is the beneficiary of a 401K plan and a pension plan with her employer, Blue Cross/Blue Shield of Virginia and wife was invested in said plans for approximately 15 years;
- b. that Sumpter had failed to subpoena timely Blue Cross/Blue Shield of Virginia records for presentation at the equitable distribution hearing;
- c. that plaintiff wife had been involved in a 2001 automobile accident out of which she received a \$20,000 settlement;

d. that plaintiff wife and Nelson jointly owned a burial plot in which Nelson had an equity interest;

e. that Nelson had invested \$3,430 in a 1992 Ford Escort and still owes \$1,000 to his brother for a loan regarding said vehicle;

f. that Nelson paid toward the marital home for years and since wife's abandonment in 2001, he had paid all mortgage payments to date; that the home required \$14,000 in repairs which should be deducted from the assessed value for equitable distribution determination;

g. that the financial disclosure forms submitted by the parties showed that wife had the greater income and assets.

35. In response to the motion for rehearing, Robinson stated, *inter alia*, that both parties were represented by counsel throughout the period of separation and during each court proceeding and that the equitable distribution hearing had been conducted pursuant to the pretrial order.

36. The trial court issued an opinion letter dated January 21, 2005 regarding the October 12, 2004 hearing in which the court recited, *inter alia*, that it had granted Robinson's motion to deny Nelson's evidence due to failure to comply with the June 30, 2004, pretrial order; finding the wife had shown constructive desertion, abandonment and cruelty; and ordering equitable distribution.

37. New trial counsel for Nelson then filed a motion to vacate the judgment and to be heard, on March 2, 2005, in which counsel recited the alleged inequities of the January 21, 2005 letter opinion of the court.

38. The court entered a final decree on March 4, 2005.

39. Nelson then retained another attorney to appeal the case.

40. In affirming the trial court, the Virginia Court of Appeals stated, *inter alia*:

In this case, husband was clearly afforded a reasonable opportunity to provide the necessary evidence. However, husband squandered that opportunity by refusing to comply with the court's pretrial order. Through his lack of diligence, husband failed to provide the evidence in question. We find no abuse of discretion in the trial court's decision to sustain wife's objection to the introduction of the evidence or in its denial of husband's reconsideration motion.

41. Sumpter failed to fulfill the requirements of the Domestic Relations Pretrial order, failed to reasonably comply with discovery propounded by the plaintiff wife, failed to properly

prepare and present Nelson's case for equitable distribution, and attempted to charge an unreasonable fee.

II. NATURE OF MISCONDUCT IN VSB DOCKET NO. 06-032-4173

Such conduct by James Fred Sumpter constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RULE 1.5 Fees

- (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
 - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

- (8) whether the fee is fixed or contingent.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.
- (e) Make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

I. FINDINGS OF FACT

VSB Docket No. 07-032-1740 [Roberts]:

42. On September 12, 2005, Sumpter was appointed to represent one Stephen Roberts (Roberts), who had previously been convicted of two felonies in Richmond Circuit Court. This appointment came after conviction but prior to sentencing, after Roberts' fourth court-appointed counsel moved to and was allowed to withdraw.

43. Sumpter filed several motions, including a motion for psychological evaluation and motions to set aside the verdict. Ultimately, the motions proved unsuccessful and on May 26, 2006, Roberts was sentenced to 33 years for aggravated malicious wounding and use of a firearm in the commission of a felony.

44. The Richmond Circuit Court appointed Sumpter as Roberts' appeals counsel, but also told Sumpter the "Public Defender's Office of Appeals" would also be appointed to assist in Roberts' appeal. In fact, there is no such office, and the Office of Appellate Defender was appointed but later moved to and was allowed to withdraw from Roberts' representation.

45. Sumpter also sought to be relieved of the appeal appointment, which motion was denied. He filed the appeal with the Court of Appeals, raising two issues. On May 4, 2007, that Court dismissed one issue on appeal because it was not preserved at trial and denied the other issue on the merits.

46. Sumpter believes that shortly after receipt of the May 4 order he forwarded it to Roberts; however, his file contained no documentation supporting his recollection. Sumpter recalls speaking to Roberts' mother, and then writing Roberts on August 3, 2007, advising of the dismissal and suggesting that Roberts file a *habeas corpus* petition alleging ineffective assistance of counsel, and further suggesting that Roberts "include all counsel in your allegations."

47. Sumpter did not timely advise Roberts of the dismissal by the Court of Appeals and did not attempt to perfect a further appeal to the Supreme Court of Virginia.

II. NATURE OF MISCONDUCT IN VSB DOCKET NO. 07-032-1740

Such conduct by James Fred Sumpter constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, it is the decision of the subcommittee to impose a Public Reprimand Without Terms and the Respondent is hereby so reprimanded.

Pursuant to Paragraph 13.B.8.c., the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By Cliona Mary Burke Robb
Cliona Mary Burke Robb
Secretary

CERTIFICATE OF SERVICE

I certify that on April 1, 2009 I caused to be mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public Reprimand Without Terms) to James Fred Sumpter, Esquire, Respondent, at, P. O. Box 5564, Midlothian, VA 23112, his last address of record with the Virginia State Bar.


